

Message Text

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ORIGIN PM-03

INFO OCT-01 NEA-06 ISO-00 L-02 DODE-00 MC-01 H-01 AID-05

ACDA-05 EB-04 TRSE-00 CIAE-00 INR-05 NSAE-00 RSC-01

SP-02 /036 R

DRAFTED BY PM/SAS:RWSMITH:RG

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R 152313Z NOV 74

FM SECSTATE WASHDC

TO AMEMBASSY TEHRAN

INFO AMEMBASSY ISLAMABAD

AMEMBASSY NEW DELHI

AMEMBASSY AMMAN

USCINCEUR

CINCPAC HONOLULU HI

C O N F I D E N T I A L STATE 252945

TAGS: MASS, IR

SUBJECT: THIRD PARTY TRANSFER PROCEDURES

REF: A) TEHRAN 8752 B) TEHRAN 9644 C) AMMAN 5628

1. YOU MAY PROVIDE FOLLOWING INFORMATION AS REQUESTED
REFTEL A TO APPROPRIATE GOI OFFICIALS REGARDING USG PRO-
CEDURES ON THIRD-PARTY TRANSFERS OF US-ORIGIN DEFENSE
ARTICLES. BEGIN UNCLASSIFIED

2. UNITED STATES GOVERNMENT PROCEDURES GOVERNING THIRD-
PARTY TRANSFERS OF US DEFENSE ARTICLES ARE BASED UPON US
LAW AND ADMINISTRATIVE REGULATIONS. THE BASIC LEGAL
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PROVISIONS RELATING TO SUCH TRANSFERS ARE FOUND IN

SECTION 505(E) OF THE FOREIGN ASSISTANCE ACT (FAA) OF 1961, AS AMENDED, AND SECTION 3(A) OF THE FOREIGN MILITARY SALES ACT (FMSA) OF 1968, AS AMENDED. BOTH SECTIONS CONTAIN IDENTICAL LANGUAGE (EXCEPT FOR REFERENCES TO A PRECEDING SUBSECTION OR PARAGRAPH) AS FOLLOWS: "IN CONSIDERING A REQUEST FOR APPROVAL OF ANY TRANSFER OF ANY WEAPON, WEAPONS SYSTEM, MUNITIONS, AIRCRAFT, MILITARY BOAT, MILITARY VESSEL, OR OTHER IMPLEMENT OF WAR TO ANOTHER COUNTRY, THE PRESIDENT SHALL NOT GIVE HIS CONSENT... TO THE TRANSFER UNLESS THE UNITED STATES ITSELF WOULD TRANSFER THE DEFENSE ARTICLE UNDER CONSIDERATION TO THAT COUNTRY, AND PRIOR TO THE DATE HE INTENDS TO GIVE HIS CONSENT TO THE TRANSFER, THE PRESIDENT NOTIFIES THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE COMMITTEE ON FOREIGN RELATIONS

OF THE SENATE IN WRITING OF EACH SUCH INTENDED CONSENT, THE JUSTIFICATION FOR GIVING SUCH CONSENT, THE DEFENSE ARTICLE FOR WHICH HE INTENDS TO GIVE HIS CONSENT TO BE SO TRANSFERRED, AND THE FOREIGN COUNTRY TO WHICH THAT DEFENSE ARTICLE IS TO BE TRANSFERRED. IN ADDITION, THE PRESIDENT SHALL NOT GIVE HIS CONSENT... TO THE TRANSFER OF ANY SIGNIFICANT DEFENSE ARTICLES ON THE UNITED STATES MUNITIONS LIST UNLESS THE FOREIGN COUNTRY REQUESTING CONSENT TO TRANSFER AGREES TO DEMILITARIZE SUCH DEFENSE ARTICLES PRIOR TO TRANSFER, OR THE PROPOSED RECIPIENT FOREIGN COUNTRY PROVIDES A COMMITMENT IN WRITING TO THE UNITED STATES GOVERNMENT THAT IT WILL NOT TRANSFER SUCH DEFENSE ARTICLES, IF NOT DEMILITARIZED, TO ANY OTHER FOREIGN COUNTRY OR PERSON WITHOUT FIRST OBTAINING THE CONSENT OF THE PRESIDENT."

3. THE ABOVE QUOTED SECTIONS OF THE FAA AND THE FMSA GOVERN ALL THIRD-PARTY TRANSFERS OF MAP-ORIGIN (FAA) OR FMS-ORIGIN (FMSA) DEFENSE ARTICLES EXCEPT DISPOSALS OF SCRAP (EVEN IN CASE OF SCRAP, US CONSENT TO DISPOSAL IS REQUIRED). THIS MEANS THAT IF, FOR EXAMPLE, THE UNITED STATES PROVIDES A MILITARY AIRCRAFT TO A COUNTRY AS EITHER GRANT MATERIEL ASSISTANCE UNDER THE FAA OR AS A FMS CASH OR CREDIT SALE UNDER THE FMSA, THEN THE PROVISIONS OF THESE SECTIONS MUST BE FOLLOWED. THIS MUST BE DONE
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EVEN IN THE CASE OF LICENSED PRODUCTION ABROAD OF US-ORIGIN DEFENSE ITEMS, IF THE END ITEM INCORPORATES DEFENSE ITEMS OF MAP OR FMS ORIGIN. AS A MATTER OF POLICY, THE SAME CRITERIA AND PROCEDURES ARE FOLLOWED WITH RESPECT TO FMS-FINANCED ITEMS. THESE REQUIREMENTS MUST BE MET REGARDLESS OF HOW MANY TIMES AN ITEM MAY BE TRANSFERRED.

4. THE THREE KEY ELEMENTS OF THESE SECTIONS ARE:

1) WHETHER THE US ITSELF WOULD TRANSFER THE ITEM TO THE COUNTRY INVOLVED; 2) ADVANCE NOTIFICATION OF THE CONGRESS IF A TRANSFER IS TO BE APPROVED; AND 3) DEMILITARIZATION OR THE OBTAINING OF WRITTEN TRANSFER ASSURANCES FROM THE RECIPIENT COUNTRY (ALSO IN ADVANCE OF APPROVAL) WITH RESPECT TO SIGNIFICANT DEFENSE ARTICLES. UNDER THE FIRST ELEMENT, A PROPOSED TRANSFER RECIPIENT MAY BE STATUTORILY INELIGIBLE UNDER THE FAA OR THE FMSA TO RECEIVE ANY OR CERTAIN DEFENSE ARTICLES DIRECTLY FROM THE US, OR THAT COUNTRY MAY BE INELIGIBLE ON POLICY GROUNDS. IN EITHER SITUATION, WE WOULD NOT OURSELVES TRANSFER DEFENSE ARTICLES TO THE COUNTRY CONCERNED, AND WE THEREFORE COULD NOT APPROVE A THIRD PARTY TRANSFER TO THAT COUNTRY.

THE REQUIREMENT TO NOTIFY THE CONGRESS IN ADVANCE OF OUR APPROVING THIRD-PARTY TRANSFERS WAS ADOPTED BY THE CONGRESS IN THE FOREIGN ASSISTANCE ACT OF 1973. PRIOR TO THAT DATE, THE CONGRESS HAD REQUESTED ONLY SEMI-ANNUAL REPORTS OF SUCH TRANSFERS.

THE THIRD-PARTY TRANSFER ASSURANCES REQUIRED FROM THE PROPOSED RECIPIENT MUST, AS REQUIRED BY THE FAA AND FMSA, BE: A) PROVIDED IN WRITING; B) GIVEN TO THE UNITED STATES GOVERNMENT; AND C) OBTAINED PRIOR TO THE APPROVAL OF THE TRANSFER.

5. IF A SIGNIFICANT DEFENSE ARTICLE WAS OBTAINED FROM THE US UNDER PURELY COMMERCIAL TERMS, I.E., NO MAP OR FMS PROCEDURES WERE INVOLVED, THEN THE ABOVE STATUTORY REQUIREMENTS DO NOT APPLY. NEVERTHELESS, WE DO, AS A MATTER OF POLICY AND ADMINISTRATIVE REGULATION, CONTINUE TO APPLY THE CRITERIA OF RECIPIENT COUNTRY ELIGIBILITY AND THIRD-CONFIDENTIAL

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PARTY ASSURANCES. THE LATTER POINT IS ALWAYS COVERED IN LICENSING ARRANGEMENTS OR EXPORT DOCUMENTS APPROVED BY THE USG, IN WHICH THE RECEIVING COUNTRY PROVIDES US WITH TRANSFER ASSURANCES, WHICH CONTINUE TO APPLY TO ALL SUBSEQUENT TRANSFERS OF THE ITEM.

6. THE QUESTION OF WHAT CONSTITUTES A "SIGNIFICANT" DEFENSE ARTICLE ON THE U.S. MUNITIONS LIST IS DEFINED IN FOOTNOTES TO SECTIONS 123.10(D) AND 124.10(M)(2), INTERNATIONAL TRAFFIC IN ARMS REGULATIONS (FYI SEE 10 FAM 180, APPENDIX A. END FYI) COPIES OF THESE REGULATIONS MAY BE PURCHASED FROM THE US GOVERNMENT PRINTING OFFICE. THIS HAS NOT, HOWEVER, CAUSED DIFFICULTIES IN THE PAST, SINCE VIRTUALLY ALL THIRD-PARTY TRANSFER REQUESTS INVOLVE OBVIOUSLY SIGNIFICANT ITEMS, SUCH AS THE ITEMS ENUMERATED

IN THE FIRST SENTENCE OF THE SECTIONS OF THE FAA AND FMSA QUOTED ABOVE. WHERE ANY DOUBT EXISTS, THE COUNTRY PROPOSING TO TRANSFER THE ITEM SHOULD REQUEST CLARIFICATION FROM THE USG.

7. THE COUNTRY PROPOSING TO TRANSFER THE ARTICLES CONCERNED SHOULD INITIATE ACTION BY REQUESTING THE USG TO APPROVE THE PROPOSAL. THE DEPARTMENT OF STATE EXERCISES THE PRESIDENT'S RESPONSIBILITIES WITH RESPECT TO THIRD-PARTY TRANSFERS. A REQUEST TO TRANSFER DEFENSE ARTICLES SHOULD THEREFORE BE SENT TO THE DEPARTMENT OF STATE WITH THE DEPARTMENT OF DEFENSE INFORMED. THE DEPARTMENT OF STATE WILL REACH A DECISION IN CONSULTATION WITH THE DEPARTMENT OF DEFENSE, AND INFORM THE CONGRESS (IF APPLICABLE) REGARDING AN AFFIRMATIVE DECISION. AFTER A COURTESY WAITING PERIOD OF ABOUT TEN DAYS FOLLOWING NOTIFICATION OF THE CONGRESS, WE WILL THEN INFORM THE COUNTRY REQUESTING

APPROVAL TO TRANSFER THAT WE INTEND TO SO APPROVE, CONTINGENT UPON OUR RECEIPT OF THE REQUIRED TRANSFER ASSURANCES FROM THE PROSPECTIVE RECIPIENT. THE US WILL TAKE CARE OF OBTAINING THE ASSURANCES THROUGH OUR EMBASSY IN THAT COUNTRY. AFTER SUCH ASSURANCES ARE RECEIVED AND IT IS DETERMINED THAT THEY MEET THE REQUIREMENTS OF US LAW AND REGULATIONS, WE WILL THEN NOTIFY THE COUNTRY REQUESTING THE APPROVAL TO TRANSFER THAT FINAL APPROVAL HAS BEEN CONFIDENTIAL

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GRANTED. END UNCLASSIFIED

8. FYI REGARDING REPORTED GOI TRANSFER OF F-5 AIRCRAFT TO JORDAN, DEPARTMENT WILL AWAIT CLARIFICATION OF NUMBERS INVOLVED AS PROMISED REFTEL B BEFORE INITIATING THIRD-PARTY TRANSFER PROCEDURES OUTLINED ABOVE. KISSINGER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: MILITARY EQUIPMENT LOANS, FOREIGN ASSISTANCE LAW
Control Number: n/a
Copy: SINGLE
Draft Date: 15 NOV 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: cunninfx
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974STATE252945
Document Source: CORE
Document Unique ID: 00
Drafter: RWSMITH:RG
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D740331-1010
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19741138/aaaabfvi.tel
Line Count: 207
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN PM
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: A) TEHRAN 8752 B) TEHRAN 9644 C) AMM, AN 5628
Review Action: RELEASED, APPROVED
Review Authority: cunninfx
Review Comment: n/a
Review Content Flags:
Review Date: 19 AUG 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <19 AUG 2002 by kellew0>; APPROVED <14 MAR 2003 by cunninfx>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: THIRD PARTY TRANSFER PROCEDURES
TAGS: MASS, IR, PK, US
To: TEHRAN
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005